

1 Arati Furness (CA Bar No. 225435)  
 2 John Raggio (CA Bar No. 338261)  
**2 NACHAWATI LAW GROUP**  
 3 5489 Blair Road  
 4 Dallas, Texas 75231  
 Telephone: (214) 890-0711  
 Fax Number: (214) 890-0712  
 Email: [afurness@ntrial.com](mailto:afurness@ntrial.com)  
 Email: [jraggio@ntrial.com](mailto:jraggio@ntrial.com)

6 *Counsel for Plaintiffs*

7 **UNITED STATES DISTRICT COURT**

8 **NORTHERN DISTRICT OF CALIFORNIA**

9 **SAN FRANCISCO DIVISION**

11 IN RE: UBER TECHNOLOGIES, INC.,  
 12 PASSENGER SEXUAL ASSAULT  
 13 LITIGATION

14 This Document Relates to:

15 *Jane Doe NLG 2 (S.G.) v. Uber Technologies,  
 16 Inc., et al., No. 3:25-cv-08707-CRB*

17 *Jane Doe NLG 3 (B.G.) v. Uber Technologies,  
 18 Inc., et al., No. 3:25-cv-08732-CRB*

19 *Jane Doe NLG 2 (J.H.) v. Uber Technologies,  
 20 Inc., et al., No. 3:25-cv-08736-CRB*

21 *Jane Doe NLG (V.S.) v. Uber Technologies, Inc.,  
 22 et al., No. 3:25-cv-08757-CRB*

23 *Jane Doe NLG 3 (P.L.) v. Uber Technologies,  
 24 Inc., et al., No. 3:25-cv-08865-CRB*

25 *Jane Doe NLG (M.S.) v. Uber Technologies, Inc.,  
 et al., No. 3:25-cv-09006-CRB*

26 *Jane Doe NLG (A.B.) v. Uber Technologies, Inc.,  
 et al., No. 3:25-cv-09180-CRB*

27 *Jane Doe NLG (M.O.) v. Uber Technologies,  
 28 Inc., et al., No. 3:25-cv-09181-CRB*

Case No. 3:23-md-03084-CRB (LJC)

**NACHAWATI LAW GROUP PLAINTIFFS'  
 OPPOSITION TO DEFENDANTS UBER  
 TECHNOLOGIES, INC., RASIER, LLC,  
 AND RASIER-CA, LLC'S MOTION TO  
 DISMISS CASES FOR FAILURE TO  
 COMPLY WITH PTO 5**

Judge: Honorable Charles R. Breyer

Date: February 13, 2026

Time: 10:00 a.m.

Courtroom: 6 – 17th Floor

1  
2 *Jane Doe NLG (R.R.) v. Uber Technologies, Inc.,*  
*et al., No. 3:25-cv-09182-CRB*

3  
4 *Jane Doe NLG (K.G.) v. Uber Technologies, Inc.,*  
*et al., No. 3:25-cv-09184-CRB*

5  
6 *Jane Doe NLG (J.R.) v. Uber Technologies, Inc.,*  
*et al., No. 3:25-cv-09186-CRB*

7  
8 *Jane Doe NLG (T.J.) v. Uber Technologies, Inc.,*  
*et al., No. 3:25-cv-09193-CRB*

9  
10 *Jane Doe NLG (C.P.) v. Uber Technologies, Inc.,*  
*et al., No. 3:25-cv-09194-CRB*

11  
12 *Jane Doe NLG (R.M) v. Uber Technologies, Inc.,*  
*et al., No. 3:25-cv-09197-CRB*

13  
14 *Jane Doe NLG (A.G.) v. Uber Technologies, Inc.,*  
*et al., No. 3:25-cv-09205-CRB*

15  
16 *Jane Doe NLG (C.B.) v. Uber Technologies, Inc.,*  
*et al., No. 3:25-cv-09213-CRB*

17  
18 *Jane Doe NLG (G.Z.) v. Uber Technologies, Inc.,*  
*et al., No. 3:25-cv-09315-CRB*

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## I. INTRODUCTION

Nachawati Law Group (“NLG”) Plaintiffs submit this Response in Opposition to Defendants Uber Technologies, Inc., Rasier, LLC, and Rasier-CA, LLC’s (collectively referred to as “Defendants” or “Uber”) Motion to Dismiss Cases for Failure to Comply with PTO 5 (ECF No. 4854). Uber wrongly presents this issue as one of refusal by the clients to produce a bona fide receipt or an information sheet regarding the trip giving rise to their claims, as if they were unwilling to comply with the Court’s Orders. However, this is not the case. The clients are not unwilling; our firm has been recently unsuccessful in obtaining current contact information in order to reach them to obtain a bona fide receipt or required ride information. Our firm is, and has been, employing all of the resources available to us outside of the original contact information in an effort to obtain the necessary information. For these reasons, and for the reasons set forth below, Plaintiffs’ counsel respectfully request that this Court deny Defendants’ Motion as moot as to Plaintiffs Jane Doe NLG 3 (P.L.); Jane Doe NLG (C.P.); Jane Doe NLG (A.G.); Jane Doe NLG (T.J.); Jane Doe NLG (R.R.); Jane Doe NLG 3 (B.G.); Jane Doe NLG (K.G.); and Jane Doe NLG (G.Z.). as ride receipts or ride information forms were produced as of January 14, 2026. (Declaration of Arati Furness, at ¶ 3(a)-(f)). For those currently outstanding, Plaintiffs’ counsel further requests that this Court allow additional time for counsel to reach or re-connect with Plaintiffs to obtain a bona fide receipt or required ride information.

As is true in the majority of cases in this litigation, these Plaintiffs were assaulted, retained our firm, and filed their case some time ago. We have been engaged to represent these Plaintiffs, were provided with information about their case and contact information but have lost communication or have been unable to reach the Plaintiffs, despite our best efforts. These efforts include numerous phone calls, emails, texts, letters, and/or address searches. (Furness Decl., at ¶ 2.) Simply put, while we have made every effort to reach these Plaintiffs to obtain a bona fide

1 receipt or required ride information, we have not received any indication that these clients are  
 2 actually aware that they have failed to comply with the Court's Orders. What we do know is that  
 3 our process of reestablishing contact and communication with clients has been effective in many  
 4 instances, and it is clear that these Plaintiffs are resurfacing over time and through the different  
 5 contact methods we are using.  
 6

7 Unfortunately, as the Court is aware, a plaintiff may become unavailable for various  
 8 reasons as litigation progresses. Counsel has utilized extensive efforts to reach these Plaintiffs,  
 9 predating and since the filing of Defendants' Motion. Counsel will continue these efforts and will  
 10 provide the missing ride receipt or required ride information for these Plaintiff immediately upon  
 11 receipt. Plaintiffs' counsel respectfully request that this Court deny Defendants' Motion as to  
 12 these Plaintiffs, due to the issue being moot, and to allow additional time for counsel to reach or  
 13 re-connect with these clients and obtain the ride receipt or required ride information. This relief  
 14 is particularly warranted in light of Defendants' failure to meet and confer as noted below.  
 15

16 Second, Uber's Motion unreasonably prejudices Plaintiffs. Uber did not meet and confer  
 17 regarding this issue for a subset of these clients. Had Uber done so, the parties could have  
 18 potentially come up with a process consistent with the Court's prior orders on this same issue.  
 19 Consequently, these legitimate claims are at risk of dismissal, sometimes with a permanent effect  
 20 in light of limitations, on the sole basis of their counsel's inability to reach them. Local Rule 37-  
 21 1 requires counsel to meet and confer in good faith before bringing a discovery motion. Civil L.R.  
 22 37-1. Defendants' counsel failed to meet and confer with counsel for NLG Plaintiffs about their  
 23 alleged failure to comply with PTO 5 before filing this Motion to Dismiss, contrary to this Court's  
 24 Local Rules. This failure independently warrants denial of Defendants' Motion as to these  
 25 Plaintiffs.  
 26

1        Third, Uber’s Motion ignores the current procedural posture and direction of the litigation.  
2        Uber also fails to specifically address how the failure of these Plaintiffs to submit a ride receipt  
3        or required ride information at this point in the litigation actually causes harm. Currently, the  
4        bellwethers have already been selected, and no NLG case has been selected as a bellwether. The  
5        current case management deadlines will be focused on the bellwether cases and the corporate  
6        discovery.  
7

8 Therefore, Plaintiffs respectfully request that the Court deny Uber's Motion, and that the  
9 Court implement less drastic remedies that are available, and that the Court allow Plaintiffs'  
10 counsel additional time to reestablish communication to obtain a bona fide receipt or required  
11 ride information for submission, where applicable as here.

## II. ARGUMENT

14       Federal Rule of Civil Procedure 41(b) allows a court to dismiss a claim for failure to  
15       prosecute or comply with a court order, “dismissal, however, is so harsh a penalty it should be  
16       imposed as a sanction only in extreme cases.” *Thompson v. Hous. Auth. of City of Los Angeles*,  
17       782 F.2d 829, 831 (9th Cir. 1986) (citing *Henderson v. Duncan*, 779 F.2d 1421, 1423 (9th Cir.  
18       1986)). Involuntary dismissal under FRCP 41(b) is a “drastic remedy which by its nature cannot  
19       be appropriately applied to every case of failure to comply with an order of the Court.” *Industrial*  
20       *Bldg. Materials v. Interchemical Corp.*, 278 F.Supp. 938, 949 (C.D. Cal. 1967). Additionally,  
21       dismissal is appropriate under Fed. R. Civ. P. 37 for violation of a discovery order “only where  
22       the failure to comply is due to willfulness, bad faith, or fault of the parties,” *Wyle v. R.J. Reynolds*  
23       *Industries, Inc.*, 709 F.2d 585, 589 (9th Cir.1983), and “where lesser sanctions are considered by  
24       the district court to be inadequate.” *N. Am. Watch Corp. v. Princess Ermine Jewels*, 786 F.2d  
25       1447, 1451 (9th Cir. 1986). “The sanctions of dismissal or default, however, are generally

1 reserved for those extreme circumstances where deception is willful, in bad faith, or relates to  
 2 matters in controversy that interfere with rightful decisions of a case.” *Id.*

3 In analyzing whether involuntary dismissal under FRCP 41(b) is warranted in any  
 4 particular case, the Court must weigh the following five factors: “(1) the public’s interest in  
 5 expeditious resolution of litigation; (2) the court’s need to manage its docket; (3) the risk of  
 6 prejudice to the defendants; (4) the public policy favoring disposition of cases on their merits;  
 7 and (5) the availability of less drastic sanctions.” *Malone v. U.S. Postal Serv.*, 833 F.2d 128, 130  
 8 (9th Cir. 1987) (quoting *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829 (1986)).  
 9 Each of these factors weigh against dismissal because of the posture of the litigation, the nature  
 10 of the cases, and the unique positioning of these Plaintiffs.

11

12 **A. The First and Second Malone Factors: The Public’s Interest in Expeditious**  
**Resolution of the Litigation and the Court’s Need to Manage its Docket Weigh**  
**Against Dismissal with Prejudice.**

13 With respect to the first *Malone* factor, the district court has discretion to determine what  
 14 is an unreasonable delay in the expeditious resolution of the litigation because “it is in the best  
 15 position to determine what period of delay can be endured before its docket becomes  
 16 unmanageable.” *In re Eisen*, 31 F.3d 1447, 1452 (9th Cir. 1994). The second *Malone* factor “is  
 17 usually reviewed in conjunction with the public’s interest in expeditious resolution of litigation  
 18 to determine if there is unreasonable delay...[the district court] knows when its docket may  
 19 become unmanageable.” *Id.* at 1453.

20 NLG has already decreased the number of Plaintiffs with missing information and/or  
 21 documents in a majority of cases that this issue has been raised. A Plaintiff’s delayed submission  
 22 of a bona fide receipt or required ride information does not unreasonably impede the resolution  
 23 of the litigation. These Plaintiffs constitutes less than 1 percent of the total MDL. And bellwethers  
 24 have already been selected. The production of these items and/or information will not have a  
 25

1 substantial impact on the timeline of the bellwether cases set for trial. Those trial deadlines will  
 2 be driven by case specific discovery in the bellwether cases as well as the overall corporate  
 3 discovery.

4 Also, the unique posture of these Plaintiffs also highlights that a dismissal of their cases  
 5 would be unreasonable at this juncture. Unlike the other unfiled cases that could be filed into the  
 6 MDL, these cases were subject to a filing deadline which subsequently triggered all deadlines  
 7 relating to the bona fide receipt or required ride information. In effect, these legitimate claims,  
 8 which often involve young women who are mobile, are now at risk for dismissal, possibly with a  
 9 permanent effect in light of limitations, on the sole basis of counsel's current inability to reach  
 10 them. While Uber is entitled to a bona fide receipt or required ride information, noncompliance  
 11 at this point does not cause an unreasonable delay in the resolution of the MDL overall. *See contra*  
 12 *In re Eisen*, 31 F.3d 1451-52 (“the bankruptcy court found that Moneymaker had taken no action  
 13 to prosecute in four years...the four-year delay in this case is clearly unreasonable.”) Therefore,  
 14 the first two factors weigh against dismissal.

17 **B. The Third Malone Factor: The Risk of Prejudice to Defendants Weighs Against**  
 18 **Dismissal with Prejudice**

19 “In determining whether a defendant has been prejudiced, we examine whether the  
 20 plaintiff’s actions impair the defendant’s ability to go to trial or threaten to interfere with the  
 21 rightful decision of the case.” *Malone v. U.S. Postal Serv.*, 833 F.2d 128, 131 (9th Cir. 1987).

22 Plaintiffs’ actions do not impair Uber’s ability to go to trial because the only further case-  
 23 specific discovery that will take place is in those cases set for bellwether trials. Uber’s reliance  
 24 on *In re Phenylpropanolamine (PPA) Product Liability Litigation* (hereinafter “PPA”) is  
 25 misplaced because the underlying facts of the claims and discovery process are inconsistent with  
 26 this case. 460 F. 3d 1217, 1223 (9th Cir., 2006). In *PPA*, the discovery timeline was triggered by  
 27 the submission of the Plaintiff Fact Sheet: Defendants could not take case-specific fact  
 28 <sup>8</sup>

1 depositions sooner than 120 days after the Plaintiff Fact Sheet was submitted, and the one-year  
 2 discovery period for completion of discovery would also not start until a Plaintiff Fact Sheet was  
 3 submitted. *Id.* at 1224. By contrast, here, the case specific discovery process is rooted in the  
 4 bellwether cases rather than each individual claim. The bellwethers have already been selected  
 5 and the cases remaining in the litigation are in fact discovery.  
 6

7 While Uber may argue that without the bona fide receipt or required ride information it is  
 8 unable to assess the entire litigation, Plaintiffs have also mitigated this risk. Our firm provided  
 9 pertinent case information for each Plaintiff, while we endeavor to continue to reach these clients  
 10 and provide a bona fide receipt or ride information sheet, as soon as we are able. As such, these  
 11 cases pose no greater risk to Uber than any unfiled case. Indeed, the prejudice to these sexual  
 12 assault survivors, some of whom who were the only ones subject to a filing cut-off, is far greater.  
 13 Therefore, the third factor weighs against dismissal.  
 14

15 **C. The Fourth Malone Factor: The Public Policy Favoring Disposition of Cases on the**  
 16 **Merits Weighs Against Dismissal with Prejudice.**

17 At a general level, the ““public policy favoring disposition of cases on their merits”—the  
 18 fourth Malone factor—always weighs against a default judgment, and often ‘strongly’ so.”  
 19 *Transamerica Life Ins. Co. v. Arutyunyan*, 93 F.4th 1136, 1147 (9th Cir. 2024) (quoting  
 20 *Hernandez v. City of El Monte*, 138 F.3d 393, 399 (9th Cir. 1998)). “By definition, a default  
 21 judgment does not promote the public policy of resolving lawsuits in their merits.” *Smith v.*  
 22 *Humboldt Cnty. Sheriff's Off. Corr. Facility*, No. 24-CV-01035-PHK, 2025 WL 41926, at \*5  
 23 (N.D. Cal. Jan. 7, 2025). As such, this factor weighs against dismissal.  
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 27  
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1           **D. The Fifth Malone Factor: The Availability of Less Drastic Sanctions Weighs Against**  
 2           **Dismissal with Prejudice.**

3           “The district court abuses its discretion if it imposes a sanction of dismissal without first  
 4           considering the impact of the sanction and the adequacy of less drastic sanctions.” *Malone*, 833  
 5           F.2d at 131.

6           Our case law reveals that the following factors are of particular relevance in determining  
 7           whether a district court has considered alternatives to dismissal: (1) Did the court  
 8           explicitly discuss the feasibility of less drastic sanctions and explain why alternative  
 9           sanctions would be inadequate? (2) Did the court implement alternative methods of  
 10           sanctioning or curing the malfeasance before ordering dismissal? (3) Did the court warn  
 11           the plaintiff of the possibility of dismissal before actually ordering dismissal?

12           *Id.*

13           These factors as well as the pretrial orders and processes in other multi-district litigations  
 14           weigh against a dismissal with prejudice. “Before dismissing an action, a court should always be  
 15           certain that other less drastic alternatives are not available.” *Eldridge v. Block*, 832 F.2d 1132,  
 16           1137 (9th Cir. 1987).

17           This particular issue can be resolved by less drastic measures. Plaintiffs’ proposed  
 18           measures, including an allowance for additional time to reach these Plaintiffs, as discussed above,  
 19           take a more holistic approach to the needs of litigation and the rights of each Plaintiff to have  
 20           their day in court.

21           By contrast, Uber’s proposed dismissal process is particularly punitive in light of the  
 22           nature of Plaintiffs’ claims, which all stem from the sexual assault or sexual misconduct by an  
 23           Uber driver, and this Court’s prior Order. There are many reasons why these victims of sexual  
 24           assault could be unresponsive. These cases often involve young women who are mobile—changes  
 25           in address name, phone number, etc. are all real human reasons why their initial contact  
 26           information is no longer valid. But, our methods of locating these Plaintiffs are seemingly  
 27           working in time.

